

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Sewell, NJ, Employer**

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**Docket No. 16-0661  
Issued: July 20, 2017**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On February 19, 2016 appellant, through counsel, filed a timely appeal from a November 18, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

### **ISSUE**

The issue is whether appellant met her burden of proof to establish an occupational disease claim causally related to factors of her federal employment.

On appeal, counsel asserts that the medical evidence submitted establishes that appellant aggravated her neck, upper extremity, and low back conditions while performing employment duties.

### **FACTUAL HISTORY**

On December 29, 2014 appellant, then a 40-year-old rural carrier associate, filed a claim for recurrence of disability (Form CA-2a) beginning October 13, 2014.<sup>4</sup> She reported that her employment duties of pulling, loading, unloading, and delivering mail caused headaches and neck, back, and bilateral upper extremity pain with numbness and tingling in all extremities. Appellant stopped work on October 13, 2014.

By letter dated March 15, 2015, OWCP informed appellant that her description of circumstances of her claim indicated that she was really claiming a new occupational disease due to repetitive work exposure over the course of more than one work shift and advised her of the medical evidence needed. In a separate letter it asked the employing establishment to provide comments from a knowledgeable supervisor and a description of the physical requirements of appellant's position.

In a March 26, 2015 statement, appellant related that her carrier duties entailed casing overhead, reaching, pulling, loading, unloading, and delivering mail using her hands and other parts of her body, and that she performed these duties almost daily. She reported that from January 2005 to July 2014 she also worked at ShopRite as a clerk in customer service and a front-end runner.

In an undated statement, an employing establishment supervisor controverted the claim. She noted that appellant had not reported any difficulties performing her job duties and was

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> Appellant timely requested an oral argument pursuant to section 501.5(b) of Board procedures. 20 C.F.R. § 501.5(b). By order dated June 24, 2016, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on the case record. *Order Denying Request for Oral Argument*, Docket No. 16-0661 (issued June 24, 2016). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 505.5(b).

<sup>4</sup> Under File No. xxxxxx536, appellant filed a claim for traumatic injury (Form CA-1) due to a June 5, 2013 motor vehicle accident when her postal vehicle was hit by another vehicle from behind. OWCP accepted a neck sprain, sprain of the lumbar region, cervical radiculitis, and lumbar radiculitis.

always looking for more hours. The supervisor further reported that appellant worked part time at ShopRite stocking shelves. She attached a copy of a rural carrier position description.<sup>5</sup>

Relevant medical evidence included reports dated June 23, 2014 to May 4, 2015 from Dr. Scott M. Fried, a Board-certified osteopath specializing in orthopedic surgery. He provided a history that on June 5, 2013 appellant's postal vehicle was hit from behind, after which she had immediate pain and discomfort about the posterior head and upper trapezial area, neck pain radiating pain into her forearms and hands with numbness and tingling, and lower back pain with sciatic radiation. Dr. Fried advised that, although appellant initially continued to work, her symptoms remained. On October 13, 2014 he advised that, because of complaints of radiating neck pain and occasional dizziness, she could no longer work. Physical examination showed limited cervical range of motion with spasms, and positive Tinel's, Hunter, and Roos tests. Dr. Fried concluded that appellant should stop work to focus on healing and treatment.

On May 4, 2015 Dr. Fried noted the accepted conditions of neck and lumbar sprains and cervical and lumbar radiculopathy. He described testing and treatment for appellant's arm conditions after the June 2015 motor vehicle accident. Dr. Fried related that appellant had returned to work, but had returned for follow up in October 2014 noting difficulty with work activities. Appellant had complained of ongoing symptoms while performing repetitive gripping, reaching, pulling, pushing, and grasping activities. Head and neck posturing were also problematic for her. Dr. Fried noted having last seen appellant on February 26, 2015 when she had continued complaints of neck and brachial plexus pain. He described a November 10, 2014 neuromusculoskeletal ultrasound test, noting brachial plexus findings on the right consistent with plexus compression, thoracic outlet syndrome, and early adhesive capsulitis on the left. Examination elicited positive Roos, Tinel, Hunter, and compression tests and limited shoulder range of motion.

Dr. Fried advised that appellant had ongoing dysfunction and disability with headaches and postconcussive symptoms. He noted that, upon returning to work after her previous work injury, her repetitive casing and reaching as well as grasping and holding of mail resulted in further aggravation and worsening of the accepted conditions. Dr. Fried concluded that initial onset of symptoms were directly related to the June 5, 2013 work injury and these conditions have been further aggravated and exacerbated by the repetitive work activities of her daily job, such that she has ongoing disability. He noted that, since she has been off work, her symptoms have improved, suggesting a clear-cut correlation between the activities and her symptomatology. Dr. Fried recommended vocational rehabilitation and found her disabled from

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<sup>5</sup> The duties and responsibilities of the position were: sorts mail in delivery sequence for the assigned route; receives and signs for accountable mail; loads mail in vehicle; delivers mail to customers along a prescribed route and on a regular schedule by a vehicle; collects monies and receipts for accountable mail; picks up mail from customers' roadside boxes; sells stamps, stamped paper and money orders; accepts C.O.D., registered, certified, and insured mail, and parcel post; furnishes routine information concerning postal matters and provides requested forms to customer; returns mail collected, undeliverable mail, and submits monies and receipts to employing establishment; prepares mail for forwarding and maintains records of change of address information; prepares a daily trip report and maintains a list of the customers on the route; conducts special surveys when required; maintains an inventory of stamps and stamped paper as needed to provide service to customers on the route; and provides for mail security at all times.

repetitive activities and regular reaching, pulling, grasping, and the substantive aspects of her work as documented in the position description.

In reports dated October 20, 2014 to March 30, 2015, Dr. Steven M. Valentino, a Board-certified osteopath specializing in orthopedic surgery, described his treatment of appellant's neck and back. He noted treating appellant for upper extremity symptomatology and that Dr. Fried had taken her off work on October 13, 2014. Dr. Valentino reported that appellant had neck and low back pain that began with the June 2013 employment injury and described physical examination findings, including significant limited neck and back range of motion which caused significant pain and spasm. He noted the accepted conditions and additionally diagnosed neck pain, lumbago, and facet mediated pain.

On October 22, 2014 Dr. Ramon Mañon-Espaillet, a Board-certified neurologist, described the June 2013 work injury. He noted appellant's complaint of chronic daily headaches, dizziness, and difficulty concentrating. Examination indicated normal mental status, intact cranial nerves, no motor or coordination deficits, and normal reflexes. Dr. Mañon-Espaillet diagnosed concussion/postconcussion syndrome and recommended a brain magnetic resonance imaging (MRI) scan.

By decision dated June 4, 2015, OWCP denied the occupational disease claim because the medical evidence of record was insufficient to establish that work-related activities caused, aggravated, or contributed to the diagnosed conditions.

Appellant, through counsel, timely requested a hearing with OWCP's Branch of Hearings and Review. In a May 21, 2015 report, Dr. Leonard Kamen, an osteopath, who is Board-certified in physical medicine and rehabilitation and pain medicine, noted the history of the June 2013 employment injury. He described appellant's medical history, including extensive physical therapy and complaints of constant pain across her head with associated dizziness, radiating neck pain, and radiating lower back pain with numbness and tingling in the extremities. Dr. Kamen reviewed the brain scan results and found them normal. Following physical examination, he diagnosed post-traumatic cephalgia with concussion syndrome following a sudden acceleration injury at work in June 2013, cervical and lumbar strain and sprain with no evidence of spinal pathology by imaging studies, brachial plexus irritability on electrodiagnostic and ultrasound testing, fibromyalgia-like symptoms with diffuse tender point sensitivity, sleep disruption, and stress anxiety issues contributing to chronic pain. Dr. Kamen recommended strengthening exercises and follow-up psychological support.

During the hearing, held on September 15, 2015, appellant testified regarding her employment history, the June 5, 2013 employment injury, and subsequent medical treatment. She stated that Dr. Fried took her off work in October 2014 and described the symptoms that prevented her from returning to work. Appellant also testified that her work at ShopRite from January 2005 to June 2014 entailed bookkeeping and customer service duties that were light in comparison to those at the employing establishment. Counsel maintained that, based on Dr. Fried's opinion, the June 4, 2015 decision should be reversed.

In e-mail correspondence dated October 14, 2015, the employing establishment noted that, for over 50 plus times from June 2013 to October 2014, appellant had sought to work extra

hours and it reiterated that appellant also worked part time at ShopRite where she stocked shelves. A copy of rural carrier associate job duties was attached.

In a September 28, 2015 report, Dr. Fried described the June 5, 2013 employment injury, appellant's subsequent condition and treatment, and her continued job duties. He noted diagnoses of cervical strain and sprain, bilateral brachial plexopathy/cervical radiculopathy, sprain of the back, lumbar radiculopathy, bilateral posterior occipital neuralgia (headache with cervical plexus symptoms) and facial radiation, long thoracic neuritis with scapula winging on the right, cervical and lumbar radiculitis, low back pain, concussion and postconcussion syndrome, and adhesive capsulitis of the left shoulder. Dr. Fried opined that, since appellant returned to work after the June 5, 2013 work injury, she has engaged in continued repetitive work activities of casing, overhead reaching, pulling, loading/unloading mail, delivering mail using her hands and other parts of her body to do the job. These activities also required regular gripping, grasping, pulling, pushing, overhead reaching, head and neck posturing, and loading of her upper extremities. The nature of these activities caused further repeated strains and sprains of the injured ligaments, muscles, and nerves. Dr. Fried noted that there is clearly a direct cause and effect relationship between these work activities and the ongoing and progressive symptomatology appellant exhibited. He explained that functional capacity testing clearly demonstrated that the work activities appellant performed were the exact causative factor of her aggravation or worsening of her work-related injuries. This was supported by objective evidence in the form of electrodiagnostic studies and muscle ultrasound testing, which clearly corroborated her clinical complaints and aggravation and worsening of her condition such that she continued to have substantial symptoms and could not work.

By decision dated November 18, 2015, an OWCP hearing representative affirmed the June 4, 2015 decision finding that the medical evidence of record contained insufficient rationale.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> has the burden of proof to establish the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>7</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>11</sup>

While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.<sup>12</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for decision. On December 29, 2014 appellant filed a recurrence claim under File No. xxxxxx536. She had stopped work on October 13, 2014 and alleged that the accepted injuries caused by a June 5, 2013 employment injury had been aggravated by her continuing job duties of repetitive casing and reaching overhead, and pulling, loading, unloading, and delivering mail using her hands and other parts of her body. OWCP properly developed appellant's claim as a new occupational disease claim under File No. xxxxxx404 based on her current employment duties.

OWCP received a series of reports from Dr. Fried in which he explained appellant's condition after she held appellant off work beginning in October 2014. In his most recent report dated September 28, 2015, Dr. Fried described the June 5, 2013 employment injury, appellant's subsequent condition and treatment, and her continued job duties. He noted diagnoses of cervical strain and sprain, bilateral brachial plexopathy/cervical radiculopathy, sprain of the back, lumbar radiculopathy, bilateral posterior occipital neuralgia (headache with cervical plexus symptoms) and facial radiation, long thoracic neuritis with scapula winging on the right, cervical and lumbar radiculitis, low back pain, concussion and postconcussion syndrome, and adhesive capsulitis of the left shoulder. Dr. Fried opined that these injuries, originated by the June 5, 2013 employment injury, were becoming exacerbated or aggravated by her continued repetitive work activities of reaching, grasping, pulling, pushing, head and neck posturing, and other activities that specifically targeted the cervical, lumbar brachial plexus, and neck areas, and this resulted in appellant's progressive deterioration. He supported his opinion with objective evidence in the form of electrodiagnostic studies and muscle ultrasound testing which clearly corroborated her clinical complaints and that she was unable to perform her job duties.

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<sup>9</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>12</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *Jimmy A. Hammons*, 51 ECAB 219 (1999); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

The Board concludes that, although his reports do not provide sufficient medical rationale to establish that the accepted employment factors caused or contributed to appellants current conditions, they strongly suggest and support a relationship between her current conditions and the accepted employment factors associated with her rural carrier associate position.<sup>13</sup>

It is well-established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.<sup>14</sup> While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and to see that justice is done.<sup>15</sup> Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's conditions are causally related to the employment factors and issue a *de novo* decision on whether she sustained an occupational disease in the performance of duty beginning October 12, 2014, as alleged.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>13</sup> See *L.F.*, Docket No. 14-1906 (issued August 13, 2015) (the Board determined that while reports by a claimant's treating physician were not completely rationalized to establish a work-related injury they strongly supported a relationship between the employment factors and diagnosed condition and remanded the case for OWCP to further develop the medical evidence).

<sup>14</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>15</sup> *Supra* note 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 20, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board